

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: OCTOBER 9, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (T WILLIAMS)
OFFICE OF THE GENERAL COUNSEL (L. FORDHAM) C.S.F. JIC RIT

RE: DOCKET NO. 030750-TI - JOINT REQUEST FOR WAIVER OF CARRIER
SELECTION REQUIREMENTS OF RULE 25-4.118, F.A.C. DUE TO
ACQUISITION OF ASSETS, INCLUDING, BUT NOT LIMITED TO,
SUBSCRIBER BASE OF CIERA NETWORK SYSTEMS, INC. (HOLDER OF
IXC REGISTRATION NO- TJ275) BY NEW ACCESS COMMUNICATIONS,
LLC (HOLDER OF IXC REGISTRATION NO. TJ511).

AGENDA: 10/21/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030750.RCM

CASE BACKGROUND

On August 4, 2003, this Commission received a petition from
Patrick D. Crocker, Lennon, Crocker & Bartosiewicz, P.L.C., on
behalf of their clients, New Access Communications LLC, requesting
approval for the waiver of the carrier selection requirements in
Rule 25-4.118, Florida Administrative Code, due to the indirect
acquisition of the customer base and related assets of Ciera
Network Systems, Inc.

The Commission is vested with jurisdiction in this matter
pursuant to Section 364.603, Florida Statutes.

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09813 OCT-98

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of long distance customers from Ciera Network Systems, Inc. to New Access Communications, LLC?

RECOMMENDATION: Yes. (Williams)

STAFF ANALYSIS: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118 (2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from, the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(4), Florida Administrative Code, states in part:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) . . .
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and

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(c) Alternative regulatory requirements for the company may serve the purpose of this Part.

New Access Communications, LLC has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to Ciera Network Systems, Inc.'s customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Further, Ciera Network Systems, Inc. does not have any outstanding regulatory assessment fees, penalties or interest.

Therefore, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Fordham)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a Consummating order.